

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN THE MATTER OF:

CASE NO. 12-11978

SCC KYLE PARTNERS, LTD

DEBTOR

CHAPTER 11

MOTION TO VACATE JUDGMENT OR IN THE ALTERNATIVE, AMEND THE
JUDGMENT PURSUANT TO BANKRUPTCY RULE 9023

**NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN
OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES
BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING
WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SERVICE UNLESS THE
COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF
NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE
DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER
GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN
A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. IF YOU
FAIL TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN.
THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.**

TO THE HONORABLE BANKRUPTCY JUDGE:

NOW COMES the County of Hays, Texas, et al, and Hays CISD (hereinafter referred to as the “Taxing Authorities”), Movants herein, and file this Motion to Vacate or in the Alternative, Amend the Judgment pursuant to Bankruptcy Rule 9023, as to that judgment of this Court entered on April 29, 2013 approving the Sale of Real Estate to Horizon Land Company, LLC , Free and Clear of Liens Under 11 U.S.C. § 363(f) (hereinafter referred to as “Order”), and in so doing would respectfully show the Court as follows:

I.

Movants are ad valorem taxing jurisdictions in the state of Texas operating under the laws of the state of Texas. As such they have claims for 2012 ad valorem taxes assessed against property to be sold pursuant to Order of this Court in April of 2013 to Horizon Land Company, LLC. In addition the Taxing Authorities have liens securing the

payment of the 2013 property taxes. Those liens arose on January 1, 2013. Texas Property Tax Code Section 32.01. However, the taxes for the 2013 taxes will not be assessed until August or September of 2013 with bills typically mailed in October 2013.

II.

The Order provides in Paragraph 11 that any liens on the property to be sold attach to the proceeds in the same priority that exists as of the date of the closing of the sale. The Taxing Authorities do not object to either the sale itself or the protection afforded its liens by the Order. Rather, the Taxing Authorities seek to clarify that the property will be sold subject to the 2013 liens or that 2013 taxes will be escrowed from the proceeds of the sale.

III.

The Taxing Authorities did not file objections to the sale, because conversations and correspondence with the Debtor through its attorneys of record indicated to the Taxing Authorities that the ensuing Order would retain the 2013 tax liens. The Taxing Authorities and the Debtor had reached this same agreement in prior sale orders in this case. The Taxing Authorities believe that it was only because of oversight that language retaining the 2013 liens was omitted from the sale order submitted to the Court.

IV.

WHEREFORE The Taxing Authorities request that the Order be vacated or amended to provide that either (1) the liens securing the payment of the 2013 property taxes be retained until payment of those taxes or (2) that the 2013 taxes be escrowed in amount to be determined by the Court or through agreement by the parties and further requests other and such relief as is just and proper.

Dated: May 8, 2013

Respectfully submitted,

/s/Lee Gordon
Lee Gordon
Texas Bar No. 08212500
MCCREARY, VESELKA, BRAGG & ALLEN, P.C.
P. O. Box 1269
Round Rock, Texas 78680
Telephone: (512) 323-3200
Facsimile: (512) 323-3205

Attorneys for the County of Hays, et al,

and

/s/ Diane W. Sanders
Diane W. Sanders
Texas Bar No. 16415500
LINEBARGER GOOGAN BLAIR & SAMPSON, LLP
P.O. Box 17428
Austin, Texas 78760-7428
Telephone: (512) 447-6675
Facsimile: (512) 443-5114

Attorneys for Hays CISD

CERTIFICATE OF SERVICE

I hereby certify that I have placed a copy of the above Motion to Vacate or in the Alternative, Amend the Judgment to the following parties by facsimile, overnight mail or first class U.S. Mail, and to those parties listed on the Court's Notice of Electronic Filing by Electronic Notification on May 8, 2013.

/s/Lee Gordon
Lee Gordon

by fax:

Mark C. Taylor
Hohman, Taube & Summers, L.L.P.
100 Congress Ave., 18th Floor
Austin, Texas 78701
Fax: 512-472-5248

U.S. Trustee
903 San Jacinto Blvd., Suite 230
Austin, TX 78701
Fax: 512-916-5331

by overnight mail:

Horizons Land Company, LLC
3314 Three Rivers Drive
Austin, TX 78746

SCC Kyle Lot 1-J, Ltd.
301 Congress Ave., Suite 1550
Austin, TX 78701

by first class U.S. mail:

Bridgestone Retail Operations, LLC
333 E. Lake Street
Bloomingdale, IL 60108

Internal Revenue Service
Centralized Insolvency Operations
P.O. Box 7346
Philadelphia, PA 19101-7346

Libby Simonson
P.O. Box 1806
Liberty, TX 77575

Texas EcoGrow
10135 Metropolitan Dr.
Austin, TX 78758

Whitney National Bank
4265 San Felipe, Suite 200
Houston, TX 77027

Kyle Investment Group, LLC
c/o Shelby A. Jordan
Jordan, Hyden, Womble, Culbreth & Holzer P.C.
500 North Shoreline Blvd., Suite 900
Corpus Christi, TX 78401-0341

Whitney National Bank
c/o James G. Ruiz
Winstead PC
401 Congress Avenue, Suite 2100
Austin, TX 78701

Whitney National Bank
c/o Joseph G. Epstein & Sean B. Davis
Winstead PC
1100 JPMorgan Chase Tower
600 Travis St.
Houston, TX 77002

Seton Family of Hospitals
c/o Ida A. Murguia, R.N., J.D.
Seton Administration Offices, Suite 410.2
1345 Philomena Street
Austin, Texas 78723